THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :_12.02.2007

\+ **WP (C) No.17625/2006**

M/S DEVI DAYAL ALUMINIUM CORPORATION ...PETITIONER

- versus -

UCO BANK ...RESPONDENT

Advocates who appeared in this case:

For the Petitioners : Mr Vijay Jhanji Sr Advocate with Mr Rajesh Jain, Mr S.C. Ladi and Mr Neeraj Sharma

For the Respondent : Mr Rajesh Ratan.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. By way of this petition a direction is sought from this Court to be issued to the respondent (UCO Bank, Model Basti Branch, New Delhi) to settle the account of the petitioner on the basis of the One Time Settlement Scheme of the Reserve Bank of India as circulated by the UCO Bank on 4.10.2005.

2. The learned counsel appearing for the respondent bank, at the outset, submitted that the said Scheme cannot be invoked by the petitioner in view of the specific provision in the Scheme itself that the guidelines would not cover cases of willful default, fraud and malfeasance. In response, the learned

counsel for the petitioner pointed out that the case of the petitioner is not one of willful default, fraud or malfeasance but a case of a failed compromise. In this context, the learned counsel appearing for the petitioner referred to two documents. One, is the letter written by the respondent on 3.1.2004 to the petitioner with regard to the compromise proposal which, as the subject indicates, has been agreed to by the Regional Office of the Bank. This letter was shown by the learned counsel for the petitioner to indicate that a compromise had, in fact, been arrived at in 2004. It is, however, to be noted that paragraph 4 of the terms of the compromise clearly indicated that the Bank would take necessary steps for withdrawing the criminal complaint against the petitioner provided an affidavit stating that the property involved in the said criminal compliant has not been transferred to anybody and it is still a valid security to the bank was given by the petitioner. The learned counsel for the respondent submitted that no such affidavit has been given and the compromise in any event fell through.

3. The other document which has been relied upon by the learned counsel for the petitioner is Annexure P-6 which is a note of the proceedings regarding compromise / settlement of the account. The proceedings indicate that the petitioner was ready and willing for a compromise settlement under the Reserve Bank Scheme of 2005. However, the only amount sought to be offered on the part of the petitioner was Rs 11.39 lakhs. On the other hand, it was represented on behalf of the Bank that the proposal did not fall under the

Scheme at all as the scheme did not operate in cases of willful default. There is some discussion in the proceedings with regard to the allegations of willful default on the part of the petitioner. However, as indicated in the final sentence of the proceedings, the bank did not agree to the proposal of the party and consequently, no compromise settlement could be arrived at.

4. The learned counsel for the respondent vehemently opposed the contention advanced by the counsel for the petitioner on the solitary point that the petitioner sought a direction for implementation of the Scheme of 2005 insofar as the petitioner was concerned when, in fact, the petitioner was not covered under the Scheme. The reason being that the Scheme was not applicable in cases of willful default, fraud and malfeasance. In this context, the learned counsel for the respondent referred to paragraph 3 of his counter affidavit wherein it is stated that the petitioner is a willful defaulter of the respondent bank and cannot rely upon the One Time Settlement Scheme circulated by the bank on 4.10.2005. The counsel for the respondent pointed out that a criminal complaint was also pending against the petitioner. He referred to the order passed by the learned Metropolitan Magistrate on 13th July, 2005 which is an order on charge. The complaint had been filed against the petitioner under Section 120B/406/418/419/420/423/467/471/34 IPC. However, the learned Metropolitan Magistrate, after considering the arguments advanced by counsel for the parties, was of the opinion that, *prima facie,* offence punishable under Section 420 read with Section 120B IPC was made

out against the accused and directed that charges be framed thereunder. A reading of the order on charge reveals that the allegations against the petitioner, which include the allegation that the petitioner had full knowledge that one of the partners of the petitioner firm had already entered into the agreement of sale with two other persons in the year 1981 and despite that they had mortgaged the property with the bank in order to get the sanction limit for extension of the credit facility in their favour. There are other allegations which are mentioned in the order on charge which I need not refer to inasmuch as what is necessary is that as of now a *prima facie* case under Section 420 read with Section 120B IPC has been found to be made out by the learned Metropolitan Magistrate and the same is pending before the criminal Court. That being the case, it appears that the petitioner's case would not be covered under the 2005 scheme.

5. The argument advanced by the learned counsel for the petitioner that, in any event, the matter should be referred to the Board inasmuch as the compromise has failed, also does not arise. The reason being that though the One Time Settlement Scheme of 2005 indicated that existing/failed compromises may be settled under the OTS at the level of ECMD Board only. This is, however, subject to the condition that the case otherwise falls under the One Time Settlement Scheme. And, since the petitioner's case is one of willful default, fraud and / or malfeasance, it gets excludeds from the scheme and the question of settlement would not arise.

6. In view of the discussion above, it would not be open for this Court in exercise of powers under Section 226 of the Constitution of India to direct the respondent to consider the case of the petitioner under the One Time Settlement Scheme of 4.10.2005 when the case of the petitioner does not fall for consideration thereunder as indicated above. No such direction can be given by this Court. It is, however, always open to the petitioner and the bank as in the case of any contracting parties to enter into any kind of settlement voluntarily. The Court cannot, under the aforesaid circumstances, direct the respondent to consider the case of the petitioner under the said Scheme.

7. With these observations, this writ petition is dismissed.

8. It is made clear that any observations made in this order will not be taken into consideration in the criminal proceedings referred to above.

BADAR DURREZ AHMED
(JUDGE)

February 12 , 2007
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